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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,454	05/16/2006	Kent Russell Davis	MID-PT018	1665
3624 7590 12/19/2008 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER WEIS, SAMUEL	
			ART UNIT 3695	PAPER NUMBER
			MAIL DATE 12/19/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/579,454

**Applicant(s)**

DAVIS ET AL.

**Examiner**

SETH WEIS

**Art Unit**

3695

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This is in response to the Applicant's original application filed 16 May 2006.

Claims 1-14 have been examined.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding independent claims 1 and 11, Applicant claims "a variable monitoring system including the steps of." However the body of the claim does not provide the structure of the system. Method steps are not sufficient to describe the system. Instead, claims 1 and 11 appear to be drawn towards software, per se. Functional Descriptive material per se is not statutory. Functional Descriptive material in combination with an appropriate computer readable medium must be capable of producing a useful, concrete and tangible result when used in a computer system. Claims 2-10 and 12 are rejected under similar reasoning.

Regarding independent claim 12, Applicant claims "automatic telecommunications based price momentum monitoring system which comprises stock exchange (SX) stock code data input by a user via mobile handset or website in which." However the body of the claim does not provide the structure of the system. Instead, claim 13 appear to be drawn towards software, per se. Functional Descriptive material per se is not statutory. Functional Descriptive material in combination with an

appropriate computer readable medium must be capable of producing a useful, concrete and tangible result when used in a computer system. Claim 14 is rejected under similar reasoning.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding independent claims 1 and 11, Applicant claims "a variable monitoring system including the steps of." However the body of the claim does not provide the structure of the system. Method steps are not sufficient to describe the system. Therefore, the claims fail to distinctly claim the subject matter which applicant regards as the invention. Claims 2-10 and 12 are rejected under similar reasoning.

Regarding independent claim 12, Applicant claims "automatic telecommunications based price momentum monitoring system which comprises stock exchange (SX) stock code data input by a user via mobile handset or website in which." A PTC reader and search step are not sufficient to describe the system. Therefore, the claims fail to distinctly claim the subject matter which applicant regards as the invention. Claim 14 is rejected under similar reasoning.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-12 are rejected under 35 U.S.C. 102(e) as being anticipated by  
Churquina U.S. Pat. Pub. No. 20040225592.

As to claims 1-12, Churquina discloses a variable momentum monitoring system  
(abstract) including the steps of:

receiving from a user an identification of a required variable data input and an

identification of a required proportional variation of the variable (abstract and Figs. 1-6  
and ¶0041-106);

obtaining the current live static value (LSV) of the identified required data input from a  
live data-stream and determining it as a base reference input (R.I) (abstract and Figs. 1-  
6 and ¶0041-106);

calculating two sets of one each of incremental reference variable levels (RVLs) using  
the determined RI and the user's identified required proportional variation, one of the  
sets having a value proportionally less than the RI and the other set having a value  
proportionally greater than the RI (abstract and Figs. 1-6 and ¶0041-106);

searching dynamic live data values (LDV) of the identified required data and comparing with the RVLs (abstract and Figs. 1-6 and ¶0041-106);  
communicating to the user when the current live value of the identified required data matches with either of the RVLs (abstract and Figs. 1-6 and ¶0041-106); and  
resetting the RI to the value of the matched RVL and recalculating the two RVLs using the reset RI and the user's identified required proportional variation (abstract and Figs. 1-6 and ¶0041-106).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahuja et al., U.S. App. Pub. No. 20020013711 (hereinafter, Ahuja), in view of Churquina U.S. Pat. Pub. No. 20040225592

As to claims 13 and 14, Ahuja discloses an automatic telecommunications based price momentum monitoring system which comprises stock exchange (SX) stock code data input by a user via mobile handset or website (abstract) in which:  
an SX code is logged (abstract and Figs. 1, 6, 10, 13 and ¶0029-58);  
a proprietary trading combination (PTC) reader captures the live SX price for the logged SX code as a reference price (P<sub>P</sub>) and time and date stamps the entry and reconciles

customer account details in a telecommunications provider's network (abstract and Figs. 1, 6, 10, 13 and ¶¶0029-58);

the system searches for price matches between SX live feed and PMLs and when a match is detected the system sends a telecommunication to the use (abstract and Figs. 1, 6, 10, 13 and ¶¶0029-58); and

the RP is automatically reset as the price of a stock moves out of the PML alert range (i.e. beyond either the upper PML or the lower PML) so as to enable the system to be automatic and ongoing; and the reset function can be facilitated by the end-user at any time manually (abstract and Figs. 1, 6, 10, 13 and ¶¶0029-58).

Ahuja does not explicitly disclose the PTC reader immediately calculates two sets of price momentum levels (PMLs) using the captured RP of each logged SX code, one set above the RP and the other set below the R.P.

However, Churquina teaches a computer implemented trading system of trading indicators based on price and volume (abstract). The system generates trading indicators by using mathematical algorithms to score different stocks. It would have been obvious to combine Churquina and Ahuja for the calculating capability of Churquina and the notification system of Ahuja in order to provide customers with complex stock information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SETH WEIS whose telephone number is (571)272-1882. The examiner can normally be reached on 8:30 to 5, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stefanos Karmis/  
Primary Examiner, Art Unit 3693